

REMARKS/ARGUMENTS

Claims 1-33 and 37-51 are pending in the present application. Claims 34-36 have been canceled without prejudice. Claims 1-2, 5-11, 13, 16-18, 20, 22-33, and 37-43 have been amended to better claim the subject matter which Applicants regard as the invention and for improved clarity. New claims, 50 and 51 have been added to specifically define the invention. Support is found throughout the specification including the claims, particularly claims 22 and 23. No new matter has been added with the present Amendment.

The Office Action states that the present application contains four groups of inventions which are not as linked as to form a single general inventive concept under PCT Rule 13.1 and thus requires election of one group.

Applicants provisionally elect with traverse the claims of Group I, namely claims 1-10 and 26-33, which are drawn to a method of enhancing the phosphorus nutrition of a plant comprising ectopically expressing in the roots of a plant an isolated nucleic acid molecule encoding a phytase polypeptide wherein the phytase is secreted from the roots, and transformed plant and progeny that ectopically expresses a secretable phytase polypeptide from the roots. With respect to the species election requirement, Applicants elect the amino acid sequence set forth in SEQ ID NO: 4. Applicants note that the amino acid sequence set forth in SEQ ID NO: 12 incorporates the amino acid sequence of SEQ ID NO: 4. Applicants reserve the right to file one or more continuation and/or divisional applications to pursue the subject matter of the non-elected claims.

The Office Action alleges that the claims are not linked by a single special technical feature because the invention of Group I does not constitute an advance over the prior art. Group I claims are allegedly taught by Austen-Phillips *et al.* (USPN 5,900,525). Applicants submit that with the entry of this Amendment, the claims are considered to be free of the prior art. For example, amended claims 1 and 11

specifically recite the step of growing the plant in a medium comprising phytate. This feature is not taught nor suggested by the cited art.

Applicants respectfully request reconsideration of the restriction requirement in view of the amendments made herein. For example, claims 11 and 20 have been amended to depend from claims 1 and 9, respectively, and to recite an additional limitation. Accordingly, rejoining of the amended claims, 11-25, with the claims of Group I is requested. Similarly, new claims (50 and 51) should be joined with the Group I claims since they are dependent claims of claims 37 and 1, respectively, and recite further limitations. Additionally, amended claims 37-43 should also be joined with the claims of Group I since they are dependent claims of claims 26 and 27. Applicants submit that with the entry of this Amendment the claims initially grouped together as Group I (claims 1-10 and 26-33) and the amended claims 11-25, 37- 43, and 50-51 share the common technical feature in that all the claims are directed to a method of enhancing the phosphorus nutrition of a plant, transformed plant and progeny that ectopically expresses a secretable phytase polypeptide from the roots.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the restriction requirement and simultaneous examination of claims 1-33, 37-43, and 50-51.

If there are further issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This amendment is accompanied by a Petition for Extension of Time (one month) and a check in the amount of \$110.00 as required under 37 C.F.R. 1.17. It is believed that this amendment does not necessitate the payment of any additional fees under 37

C.F.R. 1.16-1.17. If the amount submitted is incorrect, however, please deduct from Deposit Account No. 07-1969 the appropriate fee for this submission and any extension of time required.

Respectfully submitted,



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